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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/525,526	03/15/2000	Dietmar Przytulla	2511-092	9131

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EXAMINER

MEREK, JOSEPH C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 07/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/525,526</b>	Applicant(s) <b>Przytulla et al</b>
Examiner <b>Joe Merek</b>	Art Unit <b>3727</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Mar 15, 2000

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 27-36 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 27-29 and 34-36 is/are rejected.

7)  Claim(s) 30-33 is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on Mar 15, 2000 is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 12

6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “ top surface configured as a removable lid” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 U.S.C. § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 27-29, 34, 35, 36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wheaton (WO95/30585). Regarding claim 27, the limitation of blow-molded does not add any structure that is not found in the reference. Once the welding is accomplished the construction is unitary. The unitary construction and blow molding do not preclude the weld lines. The container of the instant invention is placed in a separable mold that will impart

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molding lines in the final product. Moreover, it has been well settled that the patentability of a product claim is not determined by the process by which it is made. See Fig. 4, where it is shown that the corners are rounded and the cross-section is square shaped. The container side walls are convex on the interior surface. See Fig. 3 which shows the stiffening element which is the groove 20 and is "U" shaped. Regarding claim 34, the lid is removable at the weld line 19 by cutting. Regarding claim 36, item 16 on either end is the foot hoop.

***Claim Rejections - 35 U.S.C. § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. <sup>34</sup> Claims 27-29, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roper '899 in view of Shaffer et al. Regarding claim 27, Roper does not teach that the container is made of plastic or blow molded. Shaffer et al teaches a drum that is made of plastic and blow-molded. It would have been obvious to employ the plastic and blow molding of Shaffer et al in the container of Roper to provide a container that will not corrode and to provide a method of producing the container rapidly. The exterior of the drum is convex and the sides are substantially identically shaped. See Fig. 1 of Roper '899 where 29 is the stiffening element. The construction of the container is unitary since it is blow molded. Regarding claims 35, the

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modified container of Roper does not teach the two side bungs. Shaffer et al teaches a drum with two bungs on the top wall that are opposite each other and adjacent the side wall. It would have been obvious to employ the bungs of Shaffer et al in the container Roper so that the container can be filled and emptied standing upright. Regarding claims 14, 21, and 25, the hoops are at approximately 43% of the height of the body. Regarding claim 34, the top surface is removable since it can be cut-off and removed from the container. Regarding claim 35, see Fig. 1 of Roper '899 where the bungs are shown which are adjacent to oppositely facing first and second sides. Regarding claim 36, see Fig. 3 of Roper '899, where 79 is the foot hoop.

6. Claims 27-29, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 940872 in view of Roper '899. Regarding claim 27, DE '872 teaches a round or rectangular shaped container but does not teach the substantially identically shaped four sides giving an approximately square shape. Roper '899 teaches a drum with four sides with substantially the same shape giving approximately square shape. It would have been obvious to employ the shape of Roper '899 in the container of DE '872 to provide an alternative shape for the container. DE '899 does not teach the horizontal indentation stiffening element. Roper '899 as seen in Fig. 1, teaches an indentation. It would have been obvious to employ the indentation of Roper '899 in the container of DE '872 to stiffen the sidewall. See Fig. 60 is the stiffening element. Regarding claim 28, the container is unitary construction since it is blow molded as taught by DE '877. Regarding claim 34, the top surface is removable since it can be cut-off and removed from the

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container. Regarding claim 35, see Fig. 1c where the claimed bungs are shown. Regarding claim 36, the hoop is seen in DE '872 as item 42.

*Allowable Subject Matter*

7. Claims 30-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

8. Applicant's arguments filed 7/12/02 have been fully considered but they are not persuasive. The fact that Roper '899 is a 30 year old reference and made of metal does not eliminate the combination with Shaffer et al. It is notorious in the art to substitute metal for plastic as well as plastic for metal. One of ordinary skill in the art would look to Shaffer et al and to Roper '899 for structure that would work with both metal and plastic. The Wheaton reference does include weld lines. These are not precluded by the claimed unitary and blow molded construction. The blow molded container of the instant invention will also have lines, where the mold halves meet. The DE '872 reference teaches that a round or rectangular barrel or drum can be made by blow molding. It would have been obvious to employ the different rectangular shape Roper '899, i.e a square.

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***Conclusion***

9. This is a RCE of applicant's earlier Application No. 09/525,526. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses in Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the

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examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joe Merek whose telephone number is (703) 305-0644.

Joe Merek/jm

July 26, 2002



LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
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